

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

IN RE:)	CASE NO. 3:19-03841
Pain MD, LLC)	CHAPTER 7
)	JUDGE RANDAL S. MASHBURN
Debtor(s))	

**AGREED ORDER RESOLVING OBJECTIONS TO THE TRUSTEE'S MOTION
TO ABANDON MEDICAL RECORDS**

Comes now the Tennessee Attorney General on behalf of the Bureau of TennCare ("Tennessee"); the United States Attorney for the Middle District of Tennessee on behalf of the United States ("United States"); the Acting United States Trustee, Region 8 ("U.S. Trustee"); and the Chapter 7 Trustee David Rogers ("Trustee") on behalf of the Estate through undersigned counsel and agree as evidenced by the signatures below to the resolution of the Trustee's Motion to Abandon Medical Records. (ECF No. 44).

The parties represented by undersigned counsel respectfully state to the Court the following:

- 1) On June 14, 2019, Pain MD, LLC ("Debtor") filed a voluntary petition under Chapter 7 of the United States Bankruptcy Code.
- 2) In May 2017, Tennessee filed a civil fraud lawsuit against the Debtor, as well as its owners and various related entities, principally alleging violations of the

Tennessee Medicaid False Claims Act, Tenn. Code Ann. §§ 71-5-181 to -185, associated with billing TennCare for medical injection procedures from May 2010 forward. *State of Tennessee v. Pain MD, LLC, et al.*, C.A. No. 2017-262 (Williamson Cnty. Cir. Ct.) (“State Proceeding”).

3) On November 15, 2018, the United States filed suit against the Debtor and others alleging False Claims Act and common law violations tied to the Debtor’s submission of fraudulent claims for tendon origin injections to Medicare and TRICARE during the period from mid-2010 through October 2018. *See United States v. Kestner*, Civil Action No. 3:18-cv-1289 (M.D. Tenn.), Doc. No. 1 (“Federal Proceeding”).

4) The Debtor’s records are critical evidence in both the State Proceeding and the Federal Proceeding.

5) On July 26, 2019, the Trustee filed a Motion and Notice to Abandon Medical Records (“Motion”), which sought a ruling that the Debtor was not a “health care business” pursuant to 11 U.S.C. § 101(27A). (ECF No. 44). Such a ruling would also determine that the Trustee’s responsibilities under 11 U.S.C. § 351 would not apply. (*Id.*).

6) On August 16, 2019, the U.S. Trustee filed an objection to the Motion. (ECF No. 55).

7) On August 16, 2019, Tennessee and the United States jointly objected to the Trustee’s Motion to Abandon Medical Records. (ECF No. 56).

8) On August 27, 2019, this Court heard arguments regarding whether the Debtor was a “health care business” as that term is defined in 11 U.S.C. § 101(27A). At

that hearing, the Court held that the debtor was indeed a “health care business” under the Bankruptcy Code. (ECF No. 77).

9) Thereafter, the hearing on the Motion to Abandon Medical Records was continued to a September 3, 2019, status conference.

10) At the September 3, 2019, status conference, the parties to this filing represented that additional time was needed to secure an agreement.

11) The Court continued that status conference to September 17, 2019.

IT IS HEREBY ORDERED, that the United States, Tennessee, U.S. Trustee, and the Trustee, through counsel, have resolved the Objection of the U.S. Trustee (ECF No. 55) and the Objection of the United States and Tennessee (ECF No. 56) to the Trustee’s Motion to Abandon Medical Records (ECF No. 44) as follows:

1. The Trustee shall pay going forward—and also make current on—the storage costs of all storage facilities listed on the Debtor’s petition for a period of one year from the date of the Agreed Order’s entry;
2. The Trustee shall pay Bizmatics, which maintains an electronic platform for Debtor’s post-2014 medical records, for a period of one year from the date of the Agreed Order’s entry;
3. The Trustee agrees to preserve and make available to the United States and to Tennessee the Debtor’s records located at the storage facilities listed on the Debtor’s petition;
4. The United States and Tennessee do not waive their position that the Trustee and Defendants in the Federal Proceeding and the State Proceeding must

preserve the records for the duration of those litigations. However, the United States and Tennessee agree to this order as a means of preserving the records in the interim one-year period. By August 1, 2020, the United States, Tennessee, and the Trustee agree to confer about possible preservation or disposition of the records after the one-year period has elapsed. At the conclusion of all relevant litigation involving the Trustee, including but not limited to the Federal Proceeding, the State Proceeding, and criminal indictments of Debtor employees, the Trustee will dispose of the records in accordance with federal and state law and any protective orders in the Federal Proceeding and the State Proceeding;

5. The Trustee has satisfied his responsibilities under 11 U.S.C. § 704(a)(12);
and
6. This Agreed Order is in furtherance of State and Federal law.

**THIS ORDER WAS SIGNED AND ENTERED ELECTRONICALLY AS
INDICATED AT THE TOP OF THE FIRST PAGE.**

APPROVED FOR ENTRY:

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